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**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

CHAPTER 1. ADMINISTRATIVE

ARTICLE I. PARTIES TO UNDERSTANDING

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as City), and the FREMONT ASSOCIATION OF MANAGEMENT EMPLOYEES (hereinafter referred to as the Association or FAME), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A," attached hereto and made a part hereof.

ARTICLE II. RECOGNITION

The City recognizes the Association as the informal bargaining representative for the purposes of establishing wages, hours and other terms and conditions of employment for employees in the classified service who are employed in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Association and the Municipal Employee Relations Officer (City Manager).

ARTICLE III. NON-DISCRIMINATION

The City and the Association agree that each shall not discriminate in any aspect of employment or membership based on political affiliation, race, religious creed, color, national origin, ancestry, sex, marital status, sexual orientation, age (over 40), medical condition (cured or rehabilitated cancer), or any other basis prohibited by law.

ARTICLE IV. STATE LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500, et seq., of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer and Employee representatives noted herein did meet and discuss in good faith and did reach agreement on those matters within the scope of representation.

ARTICLE V. EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing economic benefits contained in the Personnel Resolution (Resolution 688, as amended) or Personnel

Ordinance. Such economic benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

ARTICLE VI. TERM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter referred to as "Understanding") incorporates all modifications regarding wages, hours, and other terms and conditions of employment. This Understanding shall be effective as of July 1, 2001 and shall terminate June 30, 2007.

ARTICLE VII. TOTAL AGREEMENT

- A. This Understanding sets forth the full and entire understanding of the parties regarding matters set forth herein. All prior Memoranda of Understanding are hereby superseded or terminated in their entirety, including that Memorandum of Understanding adopted by the Council December 10, 1999 for the term July 1, 1999 to June 30, 2002.
- B. No verbal statement or other addition or modification, except an amendment mutually agreed upon between the parties in writing, annexed hereto, and designated as an amendment to this Understanding, shall supersede the provisions herein.
- C. Except as specifically provided herein, it is agreed and understood that each party hereto waives its right, and agrees that the other shall not be required to negotiate with respect to any subject or matter covered herein during the term of this Understanding.
- D. The waiver of any breach, term or condition of this Understanding by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

ARTICLE VIII. VALIDITY OF MEMORANDUM

Should any article, section, or portion thereof of this Understanding be found to be unlawful and/or unenforceable by any court of competent jurisdiction, such decision of the court shall only modify or invalidate the specific article, section, or portion thereof modified or invalidated by the decision, and the remainder of this Understanding shall not be affected thereby, and shall remain in full force and effect throughout the term of this understanding.

ARTICLE IX. CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Association by this Agreement, the Personnel Rules or the Employer-Employee Relations Ordinance or Administrative Regulations. These City rights include but are not limited to the right to:

- A. Determine and modify the organization of City government and its constituent work units.
- B. Determine the nature, standard, levels and mode of delivery of City services.
- C. Determine the methods, means, number and kind of personnel by which services are provided.

- D. Impose discipline subject to applicable law and the provisions of this understanding.
- E. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules.
- F. Adjust, solely at the discretion of the City Manager and notwithstanding any other provision of this Understanding, the salary schedule, leave, and other compensation and/or benefits to recognize superior individual performance or for positions for which it is difficult to recruit and/or retain suitable employees

Nothing in this Article with the exception of Section F shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this article that are within the scope of representation.

ARTICLE X. CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect until approved by the City Council of the City of Fremont.

CHAPTER 2. SALARIES AND OTHER COMPENSATION

ARTICLE I. SALARIES

- A. Effective December 31, 2000, the salary range assigned to each classification listed in Appendix "A", as amended from time to time (hereinafter, simply "Appendix "A") shall be increased by two percent (2%). Employees holding positions in such classifications on July 1, 2001 shall be eligible to receive the retroactive portion of this increase.
- B. Effective July 1, 2001, the salary range assigned to each classification listed in Appendix "A" shall be increased by four percent (4%).
- C. Effective June 30, 2002, the salary range assigned to each miscellaneous classification listed in Appendix "A" shall be increased by four percent (4%) and the salary range assigned to each public safety classification listed in Appendix "A" shall be increased by three percent (3%).
- D. Effective June 29, 2003, the salary range assigned to each miscellaneous classification listed in Appendix "A" shall be increased by four percent (4%) and the salary range assigned to each public safety classification listed in Appendix "A" shall be increased by three percent (3%).
- E. Effective June 27, 2004, the salary range assigned to each classification listed in Appendix "A" shall be increased by four percent (4%).
- F. Effective June 26, 2005, the salary range assigned to each classification listed in Appendix "A" shall be increased by four percent (4%).

G. Effective June 25, 2006, the salary range assigned to each classification listed in Appendix "A" shall be increased by four percent (4%).

H. SAFETY MEMBER MARKET SALARY ADJUSTMENTS

Pursuant to the City of Fremont's current Memoranda of Understanding with the Fremont Police Association and the Fremont Fire Fighters, the City is to conduct salary surveys of Police Officer, Police Sergeant, and Firefighter classifications in January of 2003 and January of 2006. A formula is then applied to the survey results to determine the amount of market adjustment(s), if any.

If one or more of the survey formulae referenced above yields a market salary adjustment effective the first day of the biweekly pay period which includes January 1, 2003, then the base salary ranges for safety classifications in the FAME unit will be increased, effective the same date, by the greatest amount yielded by any of such formulae, but not to exceed 1%.

If one or more of the survey formulae referenced above yields a market salary adjustment effective the first day of the biweekly pay period which includes January 1, 2004, then the base salary ranges for the safety classifications in the FAME unit will be increased, effective the same date, by the greatest amount yielded by any of such formulae, but not to exceed 1%.

If one or more of the survey formulae referenced above yields a market salary adjustment effective the first day of the biweekly pay period which includes January 1, 2006, then the base salary ranges for the safety classifications in the FAME unit will be increased, effective the same date, by the greatest amount yielded by any of such formulae, but not to exceed 1%.

If the greatest difference shown by any of the survey formulae performed for January 2006 pursuant to the above noted MOUs is greater than 1%, then the base salary of the safety classifications in the FAME unit will be increased again, effective the first day of the biweekly pay period which includes January 1, 2007. The percentage amount of the increase shall be the lesser of 1% or the percentage difference shown by the January 2006 formula that exceeded 1%.

I. NON-SAFETY MEMBER MANAGEMENT EQUITY ADJUSTMENT

It is the intent and belief of the parties that the management salary structure should maintain reasonable relationships among management salaries in all occupational series, and that by doing so, we create an incentive to attract and retain quality managers. Therefore, to the extent market salary increases are applied to safety management classifications during the term of this Understanding, pursuant to subsection H. above, increases shall apply in the same amount(s) and on the same effective date(s) to non-safety management classifications.

J. MARKET SURVEY METHODOLOGY

The parties have developed a system for periodically conducting market surveys of classifications represented by FAME, attached hereto as Appendix "B".

ARTICLE II. PRODUCTIVITY PAYMENT

Effective July 1, 2001, each FAME member shall be eligible to receive a lump sum Productivity Payment of \$350. This payment will be made on the paycheck of August 3, 2001.

ARTICLE III. UNIFORM/SAFETY EQUIPMENT ALLOWANCE

Effective January 1, 2001, Police Safety Management employees shall receive a uniform allowance of \$1,500.00 per year, one-half amount (\$750.00), to be paid twice yearly. Payments of \$750.00 shall be made on the first paycheck in January and the first paycheck in July for the preceding six month period.

Effective January 1, 2001, Fire Safety Management employees shall receive a total uniform allowance of \$1,000.00 per year, one-half amount (\$500.00), to be paid twice yearly. Payments shall be made on the first paycheck in January and the first paycheck in July for the preceding six month period.

The City shall continue to purchase safety equipment for Fire Safety Management employees. Safety equipment includes safety shoes, turn-outs, helmet, boots, wool pants, and suspenders.

Employees who leave City employment for any reason or who are no longer covered by this agreement shall not be eligible for nor be paid the uniform allowance for any part of the six (6) month period (i.e., January through June, or July through December) after which departure from the City occurs.

An employee newly appointed to a position that is eligible to receive Uniform/Safety Equipment Allowance pursuant to this Article, shall be eligible for and shall be paid a portion of the allowance on a pro-rata basis for that part of the six (6) month period (i.e. January through June, or July through December) that occurs after his/her date of appointment.

CHAPTER 3. LEAVES

ARTICLE I. DEFINITION OF A WORKDAY

For the purpose of accrual or use of leave time, a day/workday is defined as the number of hours equivalent to 0.3846% of the total number of duty hours in the normal duty year (before deducting time off for vacation and holidays) of the employee involved.

ARTICLE II. GENERAL LEAVE

This General Leave Plan replaces all General Leave Plans in effect prior to July 1, 1999. Effective July 1, 1999, the General Leave Plan will be administered as follows:

- A. General Leave may be used for any leave purpose, but its use shall be governed by the current Personnel Rules and any amendments thereto dealing with leaves. There shall be two (2) categories of General Leave:
 - 1. Scheduled Leave: Any leave that can be reasonably forecast or anticipated, i.e., vacation leave, scheduled medical/dental appointments, "extended weekends", "personal" leave, etc., shall require prior approval of the employee's supervisor.
 - 2. Unscheduled Leave: Any leave that is genuinely of an unanticipated nature, i.e., "sick leave", emergency leave. Inappropriate use of unscheduled leave may be grounds for corrective action in accordance with current practice.
- B. The General Leave Plan shall be in lieu of vacation hours, sick leave hours, emergency hours, and management leave hours.
- C. An employee must use all accrued General Leave before a request for leave of absence without pay will be granted, except upon approval of the City Manager.
- D. DEFINITIONS

For the purposes of this Article, the following terms have the meanings stated below:

- 1. OLD GENERAL LEAVE BANK shall mean all General Leave held for the benefit of the individual employee represented by the Association as of December 1, 1992.
- 2. NEW GENERAL LEAVE BANK shall mean all General Leave accrued by the individual employee represented by the Association on or after December 1, 1992.
- 3. AGGREGATE GENERAL LEAVE BANK shall mean the total number of Old General Leave Hours plus New General Leave Hours.
- 4. AGGREGATE GENERAL LEAVE ACCRUAL LIMIT shall mean a maximum accrual of General Leave time held for the benefit of an employee as described in Section E, below, plus the number of Old General Leave hours.
- 5. SICK LEAVE BANK shall mean leave with pay hours available to employees which may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee.

6. SABBATICAL/SICK LEAVE BANK shall mean a bank of leave with pay available to all eligible employees. This bank may be used for personal illnesses or may be used for SABBATICAL LEAVE as described in Section G, below. The maximum accrual of the SABBATICAL/SICK LEAVE BANK is 1040 hours, and hours are deposited into the SABBATICAL/SICK LEAVE BANK pursuant to the requirements of Section G.
7. ACCRUABLE LEAVE hours refers to General Leave hours earned as outlined in Section E.
8. NON-ACCRUABLE LEAVE hours refers to General Leave hours credited to employees on the payday for the biweekly pay period that includes July 1 of each year. Non-Accruable General Leave hours are not available for cash out at any time and are not available for carryover from one fiscal year to the next. At the beginning of the fiscal year hours are replenished.
9. FLOATING HOLIDAY hours refers to hours credited to employees each year as described in Chapter 3, Article V. For miscellaneous members, FLOATING HOLIDAY hours are not available for cash out at any time and the hours are replenished at the beginning of the fiscal year. For public safety members, the FLOATING HOLIDAY hours will be added to the Holiday Time Bank each year and are available for cash out as described in Chapter 3, Article V.

E. GENERAL LEAVE ACCRUAL

Effective July 1, 2001, all eligible public safety employees shall earn Accruable and Non-Accruable General Leave for continuous service based on the following schedule:

Yrs. of Service	Accruable Leave		Non-Accruable Leave	Total	Max Limit on Accruable Leave ¹⁾
	Per Year	Per Pay Period			
0-5	108 hours	4.154 hrs	80 hours	188 hrs	315 hours
6-10	132 hours	5.077 hrs	80 hours	212 hrs	351 hours
11-15	132 hours	5.077 hrs	104 hours	236 hrs	387 hours
16-24	156 hours	6.000 hrs	104hours	260 hrs	423 hours
24+	156 hours	6.000 hrs	56 hours	212 hrs	423 hours

Effective July 1, 2001, all eligible miscellaneous employees shall earn Accruable and Non-Accruable General Leave for continuous service based on the following schedule:

Yrs. of Service	Accruable Leave		Non-Accruable Leave	Total	Max Limit on Accruable Leave ¹⁾
	Per Year	Per Pay Period			
0-5	128 hours	4.923 hrs	104 hours	232 hrs	315 hours
6-10	152 hours	5.846 hrs	104 hours	256 hrs	351 hours
11-15	164 hours	6.308 hrs	116 hours	280 hrs	387 hours
16+	188 hours	7.231 hrs	116 hours	304 hrs	423 hours

¹⁾Maximum based on 1.5 times maximum in 1993-1996 MOU.

Accruable and Non-Accruable General Leave may be combined for time off in a single day. Any hours of Non-Accruable General Leave used will be replenished at the beginning of the biweekly pay period that includes July 1 each year, up to the maximum allowable hours based on years of continuous service. Non-Accruable General Leave hours are not available for liquidation at any time or for payoff at termination.

The employee shall have the discretion to identify whether the leave to be used is Non-Accruable or Accruable General Leave. If the employee does not designate the type of leave to be used, the City shall draw down Non-Accruable General Leave before drawing down Accruable General Leave.

For employees with 0-5 years of service with the City, the City Manager may, at his/her sole discretion, credit non-City work experience to the employee's years of service for purposes of leave accrual rates. Such credit shall not apply for any other purpose.

Within 60 days of Council adoption of this agreement, the City will undertake a one time review of current employees with 0-5 years of service with the City of Fremont and the City Manager will take any actions he/she deems appropriate under this section.

F. UTILIZATION OF "OLD GENERAL LEAVE" BANK

1. General Leave held for the benefit of an employee on or before November 30, 1992 will be maintained in a separate "Old General Leave" bank. Old General Leave, once drawn down, can only be replenished for the purpose of liquidation upon termination, as described in paragraph G below.
2. The City will draw down accruable and Old General Leave based on the "Last In First Out" method.

G. LIQUIDATION OF LEAVE

1. CURRENT EMPLOYEES

Effective for Fiscal Years beginning July 1, 2001 and each July 1 thereafter during the term of this Understanding:

Management employees who have a general leave balance of at least 75% of their maximum accruable leave at the end of the first pay period that ends in the preceding May (e.g., May 5, 2001 for the Fiscal Year beginning July 1, 2001) will have the option to make a once a year, irrevocable election to liquidate leave. Leave may be liquidated in one-hour increments up to the annual maximum liquidation limit. The applicable maximum liquidation limit will be based on the employee's years of service as of the end of the first pay period in May. This leave liquidation will be paid out in a lump sum on the first scheduled payday in the following August (e.g. August 3, 2001 for elections made based on May 5, 2001 general leave balances).

Years of Service	Maximum Accruable Leave	75% Qualifying Balance	Maximum Liquidation Limit
0-5	315 hours	236	60 hours
6-10	351 hours	263	60 hours
11-15	387 hours	290	80 hours
16+	423 hours	317	80 hours

As its first task after Council approval of this Understanding, the Joint Management Committee (JMC) established pursuant to Chapter 8 will establish criteria for evaluating changes in leave usage patterns and costs resulting from changes in the threshold and maximum limits for general leave liquidation. Using these criteria, the JMC will complete evaluations of the general leave liquidation program by February of 2002, February of 2004, and February of 2006.

The parties agree that they will revert to the threshold and maximum liquidation limits of their previous MOU (dated July 1, 1999 to June 30, 2002) if any such evaluation determines that the leave usage pattern(s) after changing the threshold and maximum limits is inconsistent with the pattern(s) before the change and/or that the cost impacts are greater than assumed pursuant to the criteria established by the JMC.

2. SABBATICAL/SICK LEAVE BANK

Any Accruable General Leave hours accrued above the maximum aggregate general leave limit shall be placed into a SABBATICAL/SICK LEAVE BANK.

The SABBATICAL/SICK LEAVE BANK is a bank having a maximum accrual of 1040 hours. These hours may be used by eligible employees for sick leave absences or, with City Manager approval, for a SABBATICAL having a duration of not less than 520 hours. Employees will

not be eligible to use SABBATICAL time until having reached 5 years of continuous service. SABBATICALS shall only be available once every seven (7) years and are granted subject to City Manager discretion and approval.

3. AT TERMINATION OF EMPLOYMENT

The number of hours of Aggregate General leave equivalent to the number of Old General Leave Bank hours held for the benefit of an employee on November 30, 1992, shall be liquidated at termination at an hourly rate based on the following formula:

monthly base pay plus 43.183% of monthly base pay multiplied by twelve months, divided by the number of hours worked in a year (2080 for 40 hour/week employees or 2912 for 56 hour/week employees)

All remaining New General Leave Bank hours earned on or after December 1, 1992 shall be liquidated at termination only, except as provided in Section G., above, and at the hourly base rate in effect at termination.

ARTICLE III. FLEXIBLE SCHEDULING

- A. FLEXIBLE SCHEDULING is a means of recognizing extra hours worked beyond those normally scheduled. Accordingly, employees may adjust their work schedules with appropriate notice and coordination with their manager. Although employees may use FLEXIBLE SCHEDULING for partial day absences, employees may use General Leave for such partial day absences as well.
- B. All employees covered by this MOU who have been designated exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) may, with prior approval, use FLEXIBLE SCHEDULING for absences of less than a regular work day.

ARTICLE IV. SICK LEAVE BANK

- A. Sick leave may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee. The employee's immediate family is defined as wife, husband, child, brother, sister, parent, parent-in-law, grandparents, and grandparents-in-law, except that a relative or life partner residing in the same household may, for the purpose of this section, be considered as of the immediate family. A life partner is an individual who is in an established, long-term committed relationship (minimum of six (6) months) with an employee.
- B. Sick leave, either with pay or without pay, shall not be allowed for any absence resulting from illness or injury arising out of and in the course of employment by the City of Fremont. If sick leave is awarded in error, the City shall be entitled to recover the amount of salary paid on account thereof. Such sick leave shall then be restored to the account of the employee upon recovery by the City of the total amount paid.

- C. The employee shall have the discretion to identify whether the leave to be used is Old Sick Leave or SABBATICAL/SICK LEAVE. If the employee does not identify what type of leave is to be used, the City shall draw down SABBATICAL/SICK LEAVE before drawing down Old Sick Leave.
- D. Accrued time in the sick leave bank shall not be compensated for in any manner and may only be used for leave purposes permitted by Chapter 3, Article IV A of this MOU.

ARTICLE V. HOLIDAYS - HOLIDAY PAY/TIME OFF

A. The following days are designated as holidays:

1. January 1.
2. The third Monday in January, known as "Martin Luther King Jr. Day".
3. The third Monday in February, known as "Presidents Day".
4. The last Monday in May, known as "Memorial Day".
5. July 4.
6. The first Monday in September, known as "Labor Day".
7. November 11, known as "Veterans Day".
8. The Thursday in November appointed as "Thanksgiving Day".
9. The day following "Thanksgiving Day".
10. December 24.
11. December 25.
12. December 31.
13. One floating holiday (8 hours) accrued as of July 1 of each year covered in this agreement. Any employee starting employment after July 1 of any year shall be entitled to floating holiday hours for that fiscal year determined as follows: the total number of complete biweekly pay periods remaining in the fiscal year, divided by twenty-six (26), multiplied by eight (8) hours, then rounded up to the nearest quarter hour.
14. Effective July 1, 2001, public safety members who have completed 24 years of service with the City of Fremont will accrue six (6) additional floating holidays (48 hours) as of the first pay day of each July subsequent to the completion of 24 years of service.

15. Every other day appointed by the President or Governor and authorized by the City Manager, or designated by the City Council for a public fast, Thanksgiving or holiday.
- B. The days upon which holidays are observed shall be as provided in Article XII of Resolution No. 688, as amended. Notwithstanding the foregoing, holidays proclaimed or appointed and authorized as provided under subsection A.15. shall be observed only upon the day so proclaimed or appointed.
- C. HOLIDAY TIME BANK -- MANAGEMENT SAFETY EMPLOYEES

1. Effective November 16, 2001, and each November 16 thereafter, the City will credit a HOLIDAY bank for all Police Management Safety Employees in the amount of 104 hours. These hours will be posted on the first pay day in December of each year.

Under the prior FAME MOU, Fire Management Safety Employees were credited effective January 1, 2001 with a HOLIDAY bank of 104 hours. The parties now want to change to credit this bank in November of each year. Therefore, effective the first payday in January 2002, the City will credit a HOLIDAY bank for all Fire Management Safety Employees in the amount of 64 hours. Then, effective November 16, 2002, and each November 16 thereafter, the City will credit a HOLIDAY bank for all Fire Management Employees in the amount of 104 hours. These hours will be posted on the first payday in December of each year.

These hours shall be available for use on City-recognized holidays. Any unused hours shall be paid at the straight time hourly rate and included in the paycheck issued on the first pay day in December.

The department retains the right to determine that certain employees not needed for service responsibilities shall take holidays off as they occur. When employees request or are designated to and do take holidays off and the department approves time off on an actual holiday, such time off will be deducted from the balance of any accumulated leave banks other than sick leave.

2. There shall be no carry over of any unused holiday time from one crediting period in C.1., above, to the next. Any unused hours shall be paid to the employee at the straight time hourly rate of the employee. This payment to the employee will be included in the paycheck issued on the first payday in December.
3. Any employee commencing employment in a covered class after the applicable crediting date in Section C.1., above, shall for the remainder of that crediting period, only be credited with the number of holiday time hours equal to the number of holidays (as listed in Chapter 3, Article V) occurring between the employee's first day of employment in a covered class and the next applicable crediting date.
4. Any employee who terminates employment shall only be entitled to the number of holiday time hours equal to the number of holidays (as listed in Chapter 3, Article V) actually

occurring between the applicable crediting date in Section C.1., above, and the day prior to the employee's last day of employment. Any unused balance of such hours shall be paid at the employee's straight time hourly rate. Should such employee have taken more hours of holiday time than provided for by this section, the employee will be required to repay the City for all hours taken in excess of the number of entitled hours. The amount of repayment required shall be deducted from the employee's check.

5. Any holiday occurring as provided in Item A.15. of this article shall not be included in said holiday time bank but shall be liquidated at the employee's straight time hourly rate.

ARTICLE VI. FAMILY LEAVE

It is the City's intent to comply fully with the requirements the California Family Care Leave Act (FCL), the federal Family and Medical Leave Act (FMLA), California requirements regarding maternity disability leave (maternity leave), the City of Fremont Personnel Rules (PR) regarding Leave Without Pay (LWOP), and the General Leave (GL) Plan.

ARTICLE VII. BEREAVEMENT LEAVE

In the case of a death in the immediate family, an employee may be granted Bereavement Leave with pay for a period of two (2) work days falling during the period from the time of death to the day of the funeral. Such Bereavement Leave will not be charged against any general leave (accruable or non-accruable) or sick leave bank.

“Immediate family” shall include the child, stepchild, brother, sister, parent, grandparent, and current spouse of the employee, the parent and grandparent of the current spouse of the employee, and any person who at the time of his/her death was related to and resided in the same household as the employee. A life partner residing in the same household as the employee who is not a legal spouse may be considered as of the immediate family.

ARTICLE VIII. PERSONAL LEAVE DONATION

In the event of a medical, personal or family emergency, employees covered under this Understanding may donate or receive accrued and/or prospective leave accruals to or from other City of Fremont employees. Donations and use of donated leave time shall be administered through a Personal Emergency Time (PET) Bank, provided as follows:

- A. For purposes of this article, “medical, personal, or family emergency” shall mean circumstances in which an employee needs to take time off from, or reduce, their regular work schedule as the result of the illness or injury of themselves or illness or injury of a family member which requires their care. “Family member” shall be defined as: 1) a biological, adopted, or foster child, a step child, a legal ward under 18 years of age, and an adult dependent child over 18 years of age; 2) a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who stood in place of a parent to the employee; 3) a spouse as defined or recognized under State law for purposes of marriage in the State of California; or 4) another relative residing in and a member of the same household or a life

partner residing in the same household who is not a legal spouse.

- B. FAME unit members may donate only accrued general leave and future, unaccrued general leave. Neither sick leave nor non-accruable general leave time may be donated.
- C. The recipient employee will not accrue seniority during any period of donated leave usage. However, benefits provided pursuant to Chapter 4. Insurance, of this MOU, including any deductions authorized by the recipient employee, shall continue during any period of donated leave usage.
- D. In order to receive donated time from the PET Bank, an employee must first exhaust all general leave, both accruable and non-accruable, and sick leave banks, as applicable to the recipient employee.
- E. The point at which an employee may request use of the PET Bank shall be when all applicable leaves have been used down to an aggregate total of forty-five (45) hours and the employee anticipates that he/she will use all existing aggregate hours during the next pay period, because of the need to be absent from work more than forty-five (45) hours.
- F. The recipient employee will be responsible for payment of taxes due on the salary received when the leave is used.
- G. The donating employee cannot donate future leave accruals in excess of his/her leave accrual rate per pay period at the time of donation.
- H. The donating employee cannot donate accrued leave in excess of his/her existing general leave balance.
- I. The City Manager will determine whether or not a leave of absence will be approved for the recipient employee. The Family Medical leave Act guidelines will generally provide direction for evaluating leave requests.
- J. Neither the City nor the Association shall discriminate in any way with respect to the donation of accrued leave or future leave accruals based on race, religious creed, political affiliation, color, national origin, ancestry, sex, marital status, age (over 40), sexual orientation, medical condition, or physical or mental disability.
- K. In instances when the receiving employee does not use all donated hours, the hours not used will remain in the general, City wide PET Bank to be disbursed at the discretion of the Personnel Manager.
- L. A donating employee may designate a specific recipient to receive donated hours.
- M. FAME unit members may give or receive hours across bargaining unit lines consistent with reciprocating agreements with other City of Fremont bargaining units.
- N. The Personnel Manager will administer this PET Bank and will report to all bargaining

units on its use after one year.

CHAPTER 4. INSURANCE

ARTICLE I. ALTERNATE BENEFITS AND COMPENSATION PLAN

A. DEFINITIONS

1. The City shall secure and make available to all eligible employees, medical care, dental care, accidental death and dismemberment, child care reimbursement, excess medical expense reimbursement, and vacation leave purchase plans under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.
2. The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

B. HEALTH BENEFITS ALLOWANCE

1. The City shall determine the combined, total monthly premium cost for Kaiser Health Plan California, Delta dental insurance, and Vision Service Plan insurance, all at the family coverage rate. This total amount will be referred to below as the "HBA index group rate." The HBA index group rate will be recalculated whenever there is a change in the premium cost of one or more of the specified plans.
2. Effective January 1, 2001, the City shall contribute the sum of \$650.00 per month to the Health Benefits Allowance (HBA) for employees represented by FAME. This sum may be used to purchase medical, dental and other qualifying benefits available under the plan.
3. Effective January 1, 2002, the Health Benefits Allowance shall increase up to a maximum of \$715.00 per month but shall not exceed the HBA index group rate.
4. Effective January 1, 2003, the Health Benefits Allowance shall increase up to a maximum of \$787.00 per month but shall not exceed the HBA index group rate.
5. Effective January 1, 2004, the Health Benefits Allowance shall increase up to a maximum of \$866.00 per month but shall not exceed the HBA index group rate.
6. Effective January 1, 2005, the Health Benefits Allowance shall increase up to a maximum of \$953.00 per month but shall not exceed the HBA index group rate.
7. Effective January 1, 2006, the Health Benefits Allowance shall increase up to a maximum of \$1048.00 per month but shall not exceed the HBA index group rate.
8. Effective January 1, 2007, the Health Benefits Allowance shall increase up to a maximum

of \$1153.00 but shall not exceed the HBA index group rate.

Any premium change by a vendor that causes an adjustment to the HBA will be effective in the pay period in which the premium change takes effect. However, at no time will the HBA exceed the applicable maximum pursuant to sections B.2 through B.8, above.

9. In the event health premiums and/or costs for the selected benefits exceed the amount of the HBA, the balance will be paid by the employee through automatic pre-tax payroll deduction, as provided by IRC Section 125. Money not used for the purchase of benefits under the plan will be paid to the employee in taxable compensation.
 10. The City contribution as established above shall be the maximum amount required, and the City shall not be responsible for contribution of any sum in addition to that established by the terms of this Understanding.
- C. The coverage, exclusions, and limitations of the City sponsored plans are those in force on July 1, 1996, for the purpose of description of said plans. As provided under the Public Employees' Medical and Hospital Care Act (PEMHCA), medical care benefits are provided through the Public Employees' Retirement System medical plan, subject to such changes as may be made by the PERS Health Benefits Division in its role as administrator of said health plans.
- D. In the event the Federal government implements a nation-wide health care plan that mandates changes to the health and welfare programs described in this Memorandum of Understanding, the City and the Association agree to meet in a timely manner to discuss the impact.
- E. Dental Insurance. A dental insurance plan will be available for all employees and their eligible dependants. Annual maximum dental coverage per calendar year is \$2000 per covered individual. Orthodontic maximum coverage per calendar year is \$1500 per covered individual.
- F. Vision Insurance. A vision insurance plan will be available for all employees and their eligible dependants. The plan will provide benefits which include an eye examination and lenses every year and frames every two (2) years. The plan will include a ten dollar (\$10) deductible for all services. An employee may elect to enroll him/herself and any eligible dependants in the plan during the annual enrollment period. Enrollment and benefits will be subject to the conditions as provided by the plan.

G. RETIREE MEDICAL PREMIUM REIMBURSEMENT

1. Members who retired prior to July 1, 1999 will continue to receive the benefit amount in effect June 30, 1999.
2. Effective July 1, 1999, the City will reimburse employees retiring on or after that date up to \$200.00 per month toward the medical premium paid by said employee, with the following adjustments:
 - i) employees retiring with more than 10 years and less than 20 years of service with

the City will receive an additional \$25 per month toward the medical premium paid by the employee, for a total of \$225.00 per month;

- ii) employees retiring with more than 20 years and less than 30 years of service with the City will receive an additional \$50 per month toward the medical premium paid by the employee, for a total of \$250.00 per month;
- iii) employees retiring with more than 30 years of service with the City will receive an additional \$75 per month toward the medical premium paid by the employee, for a total of \$275.00 per month.

Employee Years of Service at Retirement	City Base Contribution	Adjustment for Years of Service (\$/mo.)	Total City Contribution (\$/mo.)
Less than 10	\$200	\$0	\$200
10 to 20	\$200	\$25	\$225
20 to 30	\$200	\$50	\$250
More than 30	\$200	\$75	\$275

- 3. Effective July 1, 2002, employees retiring from the City of Fremont on or after July 1, 2001 with 20 or more years of service at the date of retirement will be entitled to receive for reimbursement of retiree medical insurance premiums, an amount equal to the greater of the amount described in Section G.2., above, or the Kaiser premium for single-party coverage in effect on January 1, 2002 or the date of the employee's retirement, whichever is later.
- 4. Effective July 1, 2003, employees retiring from the City of Fremont on or after July 1, 2001 with 25 or more years of service at the date of retirement will be entitled to receive for reimbursement of retiree medical insurance premiums an amount equal to the greater of the amount described in Section G.2., above, or the Kaiser premium for two-party coverage in effect on January 1, 2003 or the date of the employee's retirement, whichever is later.
- 5. For purposes of evaluating eligibility for this benefit, credit will be given, upon submission of proof by the employee to the satisfaction of the Personnel Manager, for up to 10 years of service with other public agencies. "Other public agencies" shall mean state, local, or federal government, special districts, and public school, college or university service. For those employees who came to the City of Fremont in 1994 as part of the original Union City fire services contract, Union City service will be counted as City of Fremont service.

6. It is further understood that should the Association elect to continue medical insurance premium coverage for eligible retired employees, any cost increases occurring and projected at the time of negotiation of a new Understanding shall be considered a cost to the new agreement.

ARTICLE II. LIFE INSURANCE

All Association employees employed in the classes of positions set forth in Appendix "A" of this Understanding shall be provided One Hundred Thousand Dollars (\$100,000) of group life insurance under a program to be selected and administered by the City. The employee may choose to provide life insurance coverage to eligible dependents.

ARTICLE III. LONG-TERM DISABILITY INSURANCE

A. MANDATORY INSURANCE PURCHASE

1. The long-term disability premium will be paid by the employee as an after-tax deduction on a biweekly basis.
2. Minimum long-term disability insurance coverage will be the equivalent of that contracted through the City's insurance carrier as of July 1, 1999. Effective July 1, 2001, the premium will be calculated based on the employee's monthly salary or Fifteen Thousand Dollars (\$15,000), whichever is less. The benefit is calculated as 66-2/3% of the employee's monthly salary to a maximum benefit of Ten Thousand Dollars (\$10,000).

B. LONG-TERM DISABILITY BRIDGE LEAVE POOL

It is the intent of the Association and the City to provide a "bridge" for employees who might suffer an unexpected injury or illness that qualifies them for Long-Term Disability Insurance, so that these employees are financially protected until Long-Term Disability Insurance benefits commence. Accordingly, on July 1, 2001, the City will establish a Long-Term Disability Bridge Leave Pool ("Pool") of 1000 hours of leave that may be drawn upon by Association members who have suffered a non-job-related injury or illness that results in the employee taking a leave of absence and collecting long-term disability payments under the Long-Term Disability Insurance program, and who have used all of their Sabbatical/Sick Leave.

In such cases the employee will be eligible for leave from the Pool, subject to the following conditions:

1. The amount of leave granted will not exceed 340 hours minus the amount of the employee's Sabbatical/Sick Leave at the time of the illness or injury.
2. The employee may not apply for leave from the Pool until long-term disability payments have begun, except in the following circumstance:
 - i) if the employee's physician certifies to the City that the illness/injury will result in an

absence from work that exceeds 340 consecutive hours, the employee may apply for leave immediately after receiving that certification;

- ii) if the employee withdraws leave from the Pool based on physician certification and subsequently does not qualify for long-term disability payments, the employee will reimburse the City for all such leave using general leave or other available leave banks; if the employee does not possess enough leave to reimburse the City, the employee and the City will negotiate an acceptable repayment plan.
- 3. The total amount of LTD Bridge leave granted to Association members between July 1 of each year and June 30 of each succeeding year will not exceed 1000 hours.
 - 4. On July 1, 2002, and July of each succeeding year during the term of this Understanding, the pool will be restored to 1000 hours.

C. DISABILITY LEAVE

As of July 1, 1999, the parties agree that Personnel Rule Article XII, Section 2.01, titled "Disability Leave", Paragraph 1 is superseded by the terms of this MOU for non-public safety FAME represented employees.

The parties agree that the City will provide salary continuation to non-public safety FAME represented employees injured on the job as determined by the City in accordance with Workers' Compensation law of the State of California, for the duration of the long-term disability insurance eligibility period. For example, if the long-term disability insurance eligibility period is 60 calendar days and a non-public safety employee is injured on the job, the employee will receive workers' compensation benefits as provided by law and the City will supplement these benefits up to the employee's full salary until the employee is eligible to receive long-term disability benefits.

CHAPTER 5. RETIREMENT

ARTICLE I. RETIREMENT

- A. The City agrees to continue its contract with the Public Employees' Retirement System (PERS) for all applicable retirement benefits in effect on June 30, 1999, except as follows:
 - 1. Effective June 17, 2001, the PERS safety contract will provide the 3% @ 50 basic retirement formula; and
 - 2. Effective July 29, 2001 the PERS miscellaneous contract will provide the 4th level 1959 survivor benefit and 3% COLA for retirees.
- B. FAME and the City jointly acknowledge that Government Code Section 20630 defines compensation for the application of the Public Employees' Retirement Law (Government Code Section 20000 et seq.), and that the Board of Administration is expressly granted the authority

to determine what constitutes compensation. FAME hereby expressly acknowledges that the City neither represents nor guarantees that items reported in this Article as compensation will be included in the calculation of retirement benefits, nor do the parties warrant in any manner nor assume any liability for a determination by PERS or any court or adjudicatory body that an item is not compensation for the purpose of calculating retirement benefits under the California Public Employees' Retirement Act.

FAME recognizes that PERS may exclude as compensation the conversions provided for in this agreement in its calculation of retirement benefits. FAME acknowledges and agrees that such exclusion by PERS or any court or adjudicatory body shall neither require the City to meet and confer nor negotiate the impacts of such exclusions, nor shall it create a right or remedy against the City based on such exclusions.

ARTICLE II. MISCELLANEOUS EMPLOYEES' 401(a) PLAN

The City will establish an IRC Section 401(a) plan for miscellaneous employees represented by FAME to be effective July 1, 2001. The City will make contributions to the plan on a bi-weekly basis on behalf of each miscellaneous employee represented by FAME, unless and until the City amends its miscellaneous PERS contract to improve the current 2% @ 55 basic retirement formula. The City's contributions to the plan will be as follows:

1. Effective July 1, 2001, the City will contribute the equivalent of 1% of base pay each bi-weekly pay period.
2. Effective June 30, 2002, the City will contribute the equivalent of 2% of base pay each bi-weekly pay period.
3. All City contributions to the IRC Section 401(a) plan on behalf of miscellaneous employees represented by FAME will cease on the effective date of any amendment pursuant to Chapter 5, Article III, below.

ARTICLE III. IMPROVEMENT TO PERS BASIC RETIREMENT BENEFIT

The parties acknowledge that the State of California may adopt legislation during the term of this agreement that permits agencies to amend their PERS contract covering miscellaneous employees to improve the basic retirement benefit beyond the current 2% @ 55 formula. The parties further acknowledge that no amendment to the miscellaneous PERS contract may occur until the City has met and conferred with all affected employee organizations.

If such legislation is adopted, FAME and the City agree to the following:

- A. If the amendment would cause an increase of more than 6% in the City's PERS contribution rate, as determined by PERS actuarial valuation, the parties will reopen this agreement at the request of either party.
- B. If the amendment would cause an increase of 6% or less in the City's PERS contribution rate, as determined by PERS actuarial valuation, implementation of the amendment for this unit

would be subject to the following:

1. The City's contribution to the IRC Section 401(a) plan on behalf of FAME unit members would cease upon the effective date of the amendment.
2. If the PERS actuarial valuation showed that the amendment would cause an increase of more than 2% in the City's PERS contribution rate, the salary increase provided pursuant to Chapter 2, Article I, Sections C. through G., for the first fiscal year following implementation of the amendment would be reduced. The reduction would be equal to either the percent in excess of 2% by which the City's PERS contribution rate increases, or 2%, whichever is less; thus, in no event would the salary increase be less than 2%. For example, if the PERS actuarial valuation showed that the amendment would cause an increase of 5% in the City's PERS contribution rate, the salary increase for the following fiscal year would be reduced from 4% to 2%; or, if the amendment caused a 3.5% increase in the City's PERS contribution rate, the salary increase would be reduced from 4% to 2.5%; and
3. If the PERS actuarial valuation showed that the amendment would cause an increase of more than 4% in the City's PERS contribution rate, the salary increase provided pursuant to Chapter 2, Article I, Sections C. through G., for the second fiscal year following implementation of the amendment would be reduced. The reduction would be equal to either the percent in excess of 4% by which the City's PERS contribution rate increases, or 2%, whichever is less; thus, in no event would the salary increase be less than 2%. For example, if the PERS actuarial valuation showed that the amendment would cause an increase of 5% in the City's PERS contribution rate, the salary increase for the second fiscal year following implementation of the amendment would be reduced from 4% to 3%.

CHAPTER 6. GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURES

ARTICLE I. PURPOSE OF THE PROCEDURES

The purpose of these procedures shall be:

- A. To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to grievance or disciplinary appeal.
- B. To provide that the procedure shall be as informal as possible.
- C. To provide that grievances and disciplinary appeals shall be settled as promptly as possible and at the lowest possible level of the procedure.
- D. To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, prior to the imposition of discipline, or if reasonable efforts fail to resolve a grievance

through informal procedure. Provided, however, that no individual shall be accorded any relief through the grievance procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party - whether or not joined with other parties.

- E. Exclusions. The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of workers' compensation claims; unemployment insurance claims; claims made pursuant to the Fair Labor Standards Act (FLSA); or claims of employment discrimination based upon race, religious creed, color, sex, disability, medical condition (cured or rehabilitated cancer), age, political or national origin, or marital status, for which a remedy is provided by the California Fair Employment and Housing Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII of the Civil Rights Act (42 United States Code 2000e et seq.), or other applicable State or Federal law except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City's existing policies against such discrimination.

ARTICLE II. BINDING ARBITRATION

The Association and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any grievance or disciplinary appeal available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration.

The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

ARTICLE III. GRIEVANCE PROCEDURE

A. Matters Subject to Grievance Procedure

1. Grievances. For the purpose of this procedure, a "Grievance" shall be defined as any complaint or dispute concerning the interpretation or application of any ordinance or any rule or regulation of the City or the Department governing personnel practices or working conditions, or the practical consequences of a City's rights decision on wages, hours, and other terms and conditions of employment, or the interpretation or application of any of the provisions of the Memorandum of Understanding between the Fremont Association of Management Employees and the City of Fremont.
2. Probationary employees. Probationary employees who are rejected during probation shall have no right to appeal or grieve such action.

B. Procedure

The affected employee, group of affected employees, or the Association may initiate a grievance. Grievances must identify the specific action(s) on which the grievance is based and the specific provisions of this MOU and/or City rules alleged to have been violated. Association-initiated grievances shall be first submitted at the second step of the process, within ten (10) working days of the occurrence of the issue grieved or within ten (10) working days from the time the affected employee(s) should reasonably have been aware of the occurrence; it may then proceed from that step, if necessary.

1. Step 1 – Informal Discussion. The affected employee or group of affected employees shall present a grievance orally to the immediate supervisor within ten (10) working days of the occurrence of the issue grieved or within ten (10) working days from such time as the employee or Association should reasonably have been aware of the occurrence.
2. Step 2 – Formal Submission. Should the grievance remain unresolved within ten (10) working days after oral presentation pursuant to Step 1, the employee or Association representative may submit the grievance/appeal in writing to the immediate supervisor within ten (10) additional working days. The written grievance shall make specific reference to the statute, ordinance, rule, regulation, or Memorandum of Understanding provision at issue; to any disciplinary or punitive action taken, when applicable, and to the remedy requested. The supervisor shall render a decision in writing to the employee and/or Association representative within ten (10) working days after the formal submission of the grievance.
3. Step 3 – Appeal to Department Head. Should the grievance remain unresolved, the employee or Association representative may, within ten (10) working days after receipt of the supervisor's decision, submit the grievance in writing to the Department Head. The Department Head or Director or his/her designated representative shall respond to the grievance in writing within ten (10) working days after its receipt.
4. Step 4 – City Manager-Association Staff Representative. Should the grievance remain unresolved, the employee or Association representative may, within twenty (20) working days after receipt of the Department Head's written response, submit the grievance in writing to the City Manager or his/her designee. The City Manager, or designated representative, may meet as he/she deems appropriate, with the affected employee and with the assigned Association staff representative within ten (10) working days of submission and attempt to resolve the dispute.
5. Alternative Grievance-Appeal Resolution. Any other dispute resolving mechanism may be substituted upon mutual agreement between the parties.
6. Appeal to Arbitration. Should the grievance remain unresolved through the preceding steps, the Association or the City may request binding arbitration as the final step in the grievance process, by notifying the other party in writing of their intent to proceed to arbitration. Such notice shall be provided to the other party within ten (10) working days

from the date of the decision rendered under subparagraph 4, above, unless otherwise agreed to by the parties.

ARTICLE IV. DISCIPLINARY APPEAL PROCEDURE

A. Matters Subject to the Disciplinary Appeal Procedure

Disciplinary Appeal. For the purpose of this procedure, a disciplinary appeal shall be defined as a complaint or dispute as to the following disciplinary or punitive actions directed specifically at an individual employee's employment status:

1. dismissal;
2. demotion;
3. suspension of more than five (5) days;
4. reduction in salary;
5. transfer imposed for punishment or to correct deficient performance.

B. Suspension of five (5) days or less may be appealed to the City Manager within ten (10) working days of receipt. The City Manager or designee (other than the Department Head involved) shall review the circumstances and render a decision within ten (10) working days of review. The decision of the City Manager/designee shall be final and conclusive.

C. Procedure

1. The procedure for pre-disciplinary notice and meeting shall be adopted by Administrative Regulation consistent with the rule of *Skelly v. State Personnel Board*.
2. Appeal to Arbitration: Should the employee or Association not be satisfied with the City's decision following the pre-disciplinary meeting, the Association may request arbitration of the decision by notifying the City in writing, within ten (10) working days from the date the decision is rendered, of its intent to proceed to arbitration.
3. In any disciplinary appeal provided herein from a termination, suspension, reduction in pay, transfer, or demotion, any relief which the arbitrator may grant shall be limited to a rescission of the action appealed from, a restoration of any lost pay and benefits, and, where the arbitrator deems it appropriate, the imposition of substitute discipline composed of a suspension without pay of not more than six (6) months, a reduction in pay, a transfer to an established position, a demotion, or a combination of any or all of these forms of disciplinary action. The arbitrator shall have no authority to add to or modify the provisions of this MOU.
4. The Association and the City endorse the principle that disclosure of information relating to contemplated impositions of employee discipline may, in many instances, serve no

public purpose and may be harmful to the City, the Association, and the employee concerned. This endorsement of principle does not and is not intended to create any enforceable rights on the part of any person or entity.

ARTICLE V. ARBITRATION PROCESS

- A. Selection of the Arbitrator: Upon notice of intent to arbitrate, the Association and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Mediation and Conciliation Services or, if by mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet by phone or in person and if unable to mutually select an arbitrator from such list then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator.
- B. Decision of the Arbitrator: The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq., as amended. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Memorandum of Understanding.
- C. If the question of arbitrability of an issue is raised by either the employee, the Association, or the City, such questions shall be determined in the first instance by the arbitrator who shall, upon request of any party, make his/her determination prior to hearing the merits of the case.
- D. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- E. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena. On noticed application by the City, the arbitrator may order the Association to reimburse the City for its cost incurred in paying any City employee for time spent responding to a subpoena issued at the request of the Association or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.
- F. The affected employee and the City agree to share equally all costs of the arbitrator and to be responsible for their own respective costs of making their presentation to the arbitrator.
- G. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.

ARTICLE VI. GENERAL PROVISIONS

- A. Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
- B. The time limitations established herein may be extended by mutual consent for valid reasons, such as legitimate absence of one or more parties or because of injury, illness, official obligations, or unavoidable personal obligations.
- C. Concurrent grievances or appeals alleging violation of the same provision and/or based on the same occurrence may be consolidated upon the mutual agreement of the City and the Association, for the purpose of these procedures and be determined in one proceeding.
- D. While either the employee or the Association may initiate a grievance under the formal procedure (or they may join together in the procedure), once the issue identified by the grievance has been presented, no other grievance concerning the issue, incident, or action upon which the grievance is based may be initiated.
- E. The Association, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

CHAPTER 7. ASSOCIATION ISSUES

ARTICLE I. ORGANIZATION BUSINESS

- A. The president and ombudsman of the Association shall be allowed time off with pay when approved by the Municipal Employee Relations Officer (City Manager), or his/her designee for the purpose of conducting Association business. It shall be the responsibility of the employee to timely advise his/her supervisor of the expected absence from regular duties for the conduct of Association business.
- B. Other officers of the Association may be granted personal time off, paid or unpaid, for the conduct of Association business. Reasonable advance notice must be given to the respective Department Head for the use of any such time, and prior department head approval must be granted.
- C. With respect to the meet and confer process, four Association representatives shall be the maximum number of employees who will be allowed concurrent time off without loss of compensation. The Association shall submit the names of all such employee representatives to the Municipal Employee Relations Officer. The employee representatives shall request release time from their supervisors in advance of leaving their work assignments to attend meet and confer sessions. Approval of release time shall not be unreasonably denied.

ARTICLE II. MEETING FACILITIES

The Association shall be provided with reasonable use of City facilities for the purpose of holding meetings with its members, provided such usage does not interfere with revenue derived by the City from rental of such facilities.

CHAPTER 8. MISCELLANEOUS

ARTICLE I. SUBSTANCE ABUSE POLICY

The City and the Association have met, discussed, and agreed upon a Substance Abuse Policy. The City and the Association have discussed the development of a program for drug and alcohol testing. The intent is to develop a drug and alcohol testing program to cover all City employees. The City and the Association agree that the presence of drugs and alcohol in the workplace is a serious problem and will cooperate to see that City employees are working in a drug and alcohol free environment.

The Association agrees and supports the City's Substance Abuse Policy. When implementation procedures are developed, those items within the scope of representation will be subject to the meet and confer process.

ARTICLE II. AMERICANS WITH DISABILITIES ACT

It is the City's intent to comply fully with the requirements of the Americans with Disabilities Act, including, but not limited to, providing reasonable accommodation to employees with disabilities.

ARTICLE III. VARIABLE DEMAND STAFFING

The City is contemplating a change in the Personnel Rules concerning Variable Demand Staffing. The Association has no objections to the change. The City will not have any substantial alteration in its practice of using temporary employees to do bargaining unit work.

ARTICLE IV. TUITION REIMBURSEMENT

Effective July 1, 1999, the City shall fund a Tuition Reimbursement Program for use by permanent FAME members and certain probationary employees. City funding shall be up to \$90,000 through June 30, 2002. Between July 1, 2002, and June 30, 2007, City funding shall be up to \$150,000. Funding will cease as of June 30, 2007.

Non-probationary FAME employees, and probationary employees with at least six months of full-time service with the City and with approval of the City Manager or his/her designee, are eligible for reimbursement. The maximum reimbursement will be \$7500 per employee between July 1, 1999 and June 30, 2002, except that the maximum reimbursement under this program will increase to \$10,000 per employee if less than \$45,000 has been expended under this program by July 1, 2001. Between July 1, 2002 and June 30, 2007, the maximum reimbursement will be \$12,500 per employee, not including amounts reimbursed between July 1, 1999 and June 30, 2002, except that

the maximum reimbursement under this program will increase to \$15,000 per employee if less than \$75,000 of the \$150,000 has been expended under this program by July 1, 2005.

Courses eligible for reimbursement are those taken at an accredited college or university related to employment, including promotional opportunities. Reimbursement will be done on a first-come, first-served basis, i.e. first submitted for reimbursement/first-paid. Degree programs (or course work not part of a degree program) must be pre-approved by the employee's Department Head and submitted to Personnel in advance of enrollment. Reimbursement will be provided under the following conditions:

- A. Receipts must be submitted to the Personnel Office; reimbursement will not be provided without receipts;
- B. Eligible expenses include required textbooks, tuition, fees, lab fees and equipment, but will not include parking fees or health fees related to enrollment;
- C. Employees must attain a grade of "C" or better for undergraduate work and "B" or better for graduate work. Courses providing a "pass/fail" must have a "pass" to qualify for reimbursement.

A request for reimbursement will not be considered submitted until it includes the relevant receipts and proof that the necessary grade was earned. Monies expended on tuition reimbursement will be subject to the appropriate IRS regulations.

ARTICLE V. CONTINUING DISCUSSION

A. JOINT MANAGEMENT COMMITTEE (JMC)

The parties have agreed to convene a Joint Management-Management committee (JMC) consisting of four (4) representatives each of the City and FAME to meet and discuss a variety of topics of interest to both parties. The purpose of this committee is to provide an on-going forum for management employees to discuss administrative and operational issues with City representatives. It is anticipated that many administrative and operational issues of interest to management employees can in the future be resolved in the JMC rather than in contract negotiations.

Topics of immediate interest include:

- i) Development of criteria for evaluating change in leave usage patterns and cost impacts associated with changes in the threshold amount and maximums for general leave liquidation.

- ii) A study of alternatives to the Retiree Medical Premium Reimbursement program (Chapter 4, Article 1, Section G). Alternatives to be studied include but are not limited to conversion of the program to a qualified benefit plan, to a retiree health and welfare savings plan, or to an employee trust account.
 - iii) A discussion regarding opportunities for career development for FAME members.
 - iv) A discussion of guidelines to be considered in determining eligibility for Acting Pay.
 - v) A discussion regarding a facilitated mediation process.
 - vi) A discussion regarding the Association's indemnification of the city should PERS determine certain compensation is not considered to be part of final year compensation for retirement.
- B. If for any fiscal year starting after June 30, 2003 during the term of this Understanding, the City's actual general fund revenues are more than 10% below the amount projected for that year in the five-year forecast presented to the City Council with the proposed 2001/02 operating budget (see Appendix C), or if the State of California at any time eliminates its subvention of local agency vehicle in-lieu fees currently provided pursuant to Section 11005 of the California Revenue and Taxation Code, FAME and City representatives will meet to discuss the implications for the FAME unit.
- Similarly, if any market survey performed pursuant to Chapter 2, Article I – Salaries, indicates that the City is more than 10% below the market, or if, in any year, the change in the April to April Consumer Price Index for the San Francisco Bay Area -All urban consumers (CPI-U 1982-84 = 100), exceeds 8%, FAME and City representatives will meet to discuss the implications for the FAME unit.
- Such discussions may include the consideration of possible alternatives to and/or modification of the remaining terms of this Understanding.
- C. Other issues of interest to FAME members include childcare for City employees and transit/commute subsidy and/or incentive programs. These topics are also of interest to other employees City wide. In any consideration of such programs that involves other City employee representatives, the City will include input from FAME representatives.

ARTICLE VI. REAPPOINTMENT

At the discretion of the City Manager, a former permanent employee who has resigned in good standing may apply for reappointment and be reappointed to a vacant position under the following conditions:

- A. A former employee who is reappointed to the same position encumbered prior to resignation may not be required to serve another probation if he/she had previously completed probation in that classification and a waiver of the probation is approved by the City Manager.
- B. A former employee who is appointed to a different position in the same classification he/she vacated shall be required to serve another probationary period in that new position.
- C. If the former employee applies for reappointment and is reappointed to the vacated position, or is appointed to another position in the same classification, within one hundred eighty (180) calendar days of the effective date of his/her resignation, the former employee shall receive the appropriate full seniority credit for previous service for determining future general leave accrual and length of service for calculating seniority credit in the event of a reduction in force after adjustment for the unpaid leave of absence.
- D. Any former employee reappointed to the same position, or appointed to another position in the same classification, shall have any previously existing sick leave bank reinstated in full and will have thirty (30) calendar days in which to elect and initiate the repurchase of previously accrued general leave at the rate in effect at the time of the liquidation of general leave.

ARTICLE VII. RESIDENCY/PROXIMITY

The City and the Association have discussed the adoption of a City-wide residency/proximity policy that would require employees to live within a reasonable distance of the workplace (50 mile radius from the City administration building, inclusive of Modesto). The Association agrees to the policy with the understanding that it will not be implemented until all employee groups in the City have met and conferred with the City over the policy and until it is implemented City-wide. Upon implementation of the policy, newly hired employees will have until one year following completion of probation to comply with the policy.

Executed this ____ day of _____, 2001, by the Employer-Employee representatives whose signatures appear below.

Employer Representatives:
CITY OF FREMONT

Employee Representatives:
FREMONT ASSOCIATION OF
MANAGEMENT EMPLOYEES

Jan Perkins, City Manager

John Barron, FAME President

Dave Millican, Deputy City Manager

Ron Hunt, FAME Member

David Turner, Labor Relations Officer

Dan Marks, FAME Member

Harriet Commons, Senior Manager

Geoff LaTendresse, FAME Member

Craig Steckler, Police Chief

Steve Loyd, FAME Member

Approved as to form:

Dan Schoenholz, FAME Member

Marcia Meyers, Sr. Deputy City Attorney

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APPENDIX A

FAME TITLE CLASSIFICATIONS

2540 ACCOUNTANT	4573 HOUSING DEVELOPMENT ANALYST
2535 ACCOUNTING SERVICES MANAGER	4572 HOUSING DEVELOPMENT MANAGER
1070 ADMINISTRATIVE ANALYST I	7510 HUMAN SERVICES DIRECTOR
1060 ADMINISTRATIVE ANALYST II	1042 INTERGOVERNMENTAL RELATIONS MGR
1040 ADMINISTRATIVE ANALYST III	4527 NEIGHBORHOOD RESOURCES MGR
6710 ANIMAL SERVICES ADMINISTRATOR	6215 PARK MAINTENANCE SUPERVISOR
5213 ASST CITY ENGINEER	6212 PARK PLANNING MANAGER
1017 ASST TO THE CITY MANAGER	6210 PARK SUPERINTENDENT
2018 BENEFITS/PAYROLL MANAGER	2030 PERSONNEL ANALYST
2538 BUDGET MANAGER	4520 PLANNING MANAGER/CITY PLANNER
2533 BUDGET OFFICER	5620 PLANS & PERMIT MANAGER
5615 BUILDING & SAFETY MANAGER	3525 POLICE CAPTAIN
6420 BUILDING TRADES SUPERVISOR	3510 POLICE CHIEF
4017 BUSINESS MANAGER	3530 POLICE LIEUTENANT
5211 CITY ENGINEER	3760 POLICE RECORDS ADMINISTRATOR
4095 CLINICAL NURSE EDUCATOR	6410 PUBLIC BUILDINGS SUPT
6945 CLINICAL SUPERVISOR	5420 REAL PROPERTY MANAGER
5670 COMMUNITY PRESERVATION MANAGER	6540 RECREATION SUPERINTENDENT
3650 CRIME ANALYSIS MANAGER	4590 REDEV & HOUSING PROJECT MANAGER
1340 DEPUTY CITY ATTORNEY I	4325 RETAIL PROGRAM MANAGER
1330 DEPUTY CITY ATTORNEY II	2515 REVENUE & TREASURY MANAGER
6010 DEPUTY DIRECTOR, MAINT SERV	1080 RISK MANAGER
4570 DEPUTY DIRECTOR, RDA/HOUSING	2539 SENIOR ACCOUNTANT
6520 DEPUTY DIRECTOR, REC SERV	5216 SENIOR CIVIL ENGINEER
4505 DEP DIRECTOR OF ENV SERVICES	5215 SENIOR CIVIL ENGINEER
1077 ENVIRONMENTAL SERVICES MANAGER	1325 SENIOR DEPUTY CITY ATTORNEY
6911 FAMILY SERVICES ADMIN	5020 SENIOR LANDSCAPE ARCHITECT
2537 FINANCIAL SERVICES MANAGER	
2530 FINANCIAL SERVICES SUPERVISOR	1025 SENIOR MANAGER
4010 FIRE CHIEF	2020 SENIOR PERSONNEL ANALYST
4019 FIRE DIVISION CHIEF	4525 SENIOR PLANNER
6015 FLEET SUPERINTENDENT	1715 SENIOR PROGRAMMER ANALYST
4079 HAZARDOUS MATERIALS PROGRAM MGR	

7515 SENIOR SERVICES
ADMINISTRATOR
5409 SENIOR TRANSPORTATION
ENGINEER
6047 STREET MAINTENANCE
SUPERVISOR
6045 STREET MAINTENANCE SUPT
5641 SUPERVISING BUILDING INSP

1720 SYSTEMS
ANALYST/PROGRAMMER
5410 TRAFFIC AND TRANSPORTATION
MGR
1079 TRAFFIC ENFORCEMENT PROJECT
MGR
4715 WASTE REDUCTION & REC COORD

APPENDIX B

MARKET SURVEY METHODOLOGY

1. Positions needing to be surveyed are usually identified during the MOU bargaining process.
2. Additionally the City may from time to time identify for a market study, positions for which it is difficult to recruit and/or retain employees.
3. The department and the employee will study the classification specification to determine if it accurately reflects the duties that are required. Personnel is a partner in this work.
4. A questionnaire for employee(s) may be developed from the updated class specification, especially for a multiple-employee study. For an individual position class, this step is not necessary.
5. Survey questions are developed and reviewed by employee and Department Head. Questions are related to job duties, not performance factors, volume of work, amount of administrative support, etc.
6. Surveyors are jointly identified by FAME and the City. Personnel wants to involve people outside the department to participate in surveys.
7. Surveys are conducted with cities identified as comparable to Fremont in one or more dimensions (size, location, # of employees, etc.). The same cities are typically used for all surveys to ensure equity among employees. These cities are San Jose, Milpitas, Oakland, Hayward, Berkeley, Concord, Sunnyvale, and Santa Clara. Sometimes additional cities are surveyed based on special circumstances; e.g., we know they have positions similar to those we want to learn about.

Surveyors do not focus on the position title, but rather describe the work duties to gather comparable data. We have learned that titles are often not consistent across organizations in describing similar work. To the extent necessary, we talk with people outside Personnel Departments; sometimes personnel folks can only respond to a job description or classification, not the actual work performed.

8. It is very important we find out whether the city or employee pays the employee's PERS contribution to get comparable data. We do not factor in performance pay, or perks like car allowance or signing bonuses, etc.
9. Data is compiled and analyzed. Bargaining unit representatives may assist in interpreting data. If necessary, cities are re-contacted for additional information.

10. A report is written by Personnel with findings and recommendation for salary adjustment and retroactivity, if any, and forwarded to the City Manager for review, comment, and approval. The City Manager may authorize any action he/she deems appropriate pursuant to Chapter 1, Article IX, Section F of this MOU.
11. Findings and the City Manager's determination are forwarded to the Department Head who will convey the information to the employee.
12. A Personnel Office representative and surveyors will meet with the employee and Department Head to discuss process and rationale for findings as requested.
13. Approved salary adjustments are forwarded to Payroll for implementation.

APPENDIX C



FY 2001/02 Budget Presentation – May 21, 2001

General Fund 5-Year Forecast Proposed 2001/02

(\$ Millions)	<u>00/01</u>	<u>01/02</u>	<u>02/03</u>	<u>03/04</u>	<u>04/05</u>	<u>05/06</u>
Revenues	105.9	105.6	111.6	117.3	123.4	130.1
Transfers In	<u>5.6</u>	<u>8.3</u>	<u>8.6</u>	<u>9.0</u>	<u>9.4</u>	<u>9.9</u>
Total	111.6	113.9	120.2	126.4	132.9	140.0
Expenditures	(73.5)	(79.1)	(79.1)	(85.2)	(91.6)	(97.5)
Transfers Out	<u>(30.9)</u>	<u>(41.4)</u>	<u>(38.7)</u>	<u>(43.3)</u>	<u>(45.8)</u>	<u>(47.9)</u>
Total	(104.4)	(120.5)	(117.8)	(128.5)	(137.4)	(145.4)
Net Results	7.2	(6.6)	2.4	(2.2)	(4.5)	(5.4)
Beginning Balance	<u>10.7</u>	<u>17.9</u>	<u>11.3</u>	<u>13.7</u>	<u>11.5</u>	<u>7.0</u>
Ending Balance	17.9	11.3	13.7	11.5	7.0	1.6

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